

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUN 09 2013

THOMAS G BRUTON
CLERK, U S DISTRICT COURT

BENYEHUDA WHITFIELD,)
Plaintiff,)
V.) 13 CV 4910
LESTER FINKLE, Assistant Cook County)
Public Defender,) JUDGE NORGL
LUCIANO PANICI, Judge,) MAGISTRATE JUDGE ROWLAND
DOUGLAS J. SIMPSON, Judge,)
COOK COUNTY, ILLINOIS,)
COOK COUNTY PUBLIC DEFENDER'S)
OFFICE,)
Defendants.)

COMPLAINT PURUANT TO 42 U.S.C. SEC. 1983 AND PENDENT PARTY STATE LAW
CLAIMS PURSUANT TO 28 U.S.C. SEC. 1367 (a)

NOW COMES Plaintiff, BENYEHUDAH WHITFIELD, pro se, and hereby
submits this complaint and in support states the following:

NATURE OF ACTION, JURISDICTION AND VENUE

This is a 42 U.S.C. Sec. 1983 Complaint, arising under the Civil Rights Act of 1964 and 1968 in which Plaintiff is alleging that his Fourteenth Amendment right to due process and Sixth Amendment rights of the United States Constitution was

violated. This action also includes pendent party state-law claims under the theory of respondent superior, official misconduct and custodial negligence.

Plaintiff submits that on December 7, 1994, he was arrested and charged with home invasion in Cook County, IL, in the city/suburb of Homewood (see Order of Sentence, Attachment #1). The case number under which he was prosecuted is 95 C6-60000-01. During the process of prosecution, Plaintiff was held in custody in the County of Cook (Cook County Jail and Circuit Court of Cook County, IL . On July 28th, 1999, Plaintiff agreed to a 25 year IDOC sentence in exchange for his plea of guilty to the home invasion charges, which was a negotiated plea agreement made between him and the State; and the court ordered that Plaintiff receive day-for day good conduct credit. Attached hereto (as Attachments 4-15) is a copy of the transcript of the "Change of Plea" (sentencing hearing) of July 28, 1999. Prior to accepting the plea agreement for the home invasion charge, On October 2, 1996, Plaintiff had accepted a three year sentence as part of a plea agreement for unrelated charges of aggravated battery. Attached hereto (as Attachment #16-30) is a copy of the Report of Proceedings of October 2, 1996. Neither one of the plea agreements included an additional term Plaintiff had to serve on MSR after completing the sentences he agreed to serve in exchange for his guilty pleas. Furthermore, Plaintiff did not know that he would

be required to serve an additional term after completing the sentences he agreed to serve in exchange for his guilty pleas. Nevertheless, sometime after completing the twenty-eight year sentence, he was told that would have to complete another term by being on MSR for three years. On September 8, 2009, Plaintiff submitted to the Circuit Court of Cook County, IL, Sixth Municipal District, Criminal Division, a habeas corpus petition (Attachment 31); and he challenged the constitutionality of his custody by alleging that his right to due process was being violated based on the fact that he was being denied the benefit of the plea bargain made between he and the State and requested as relief his immediate release from prison/custody. The case was assigned to the Honorable Douglas J. Simpson (Judge Simpson); who, after examining Plaintiff's petition and the July 28th, 1999 transcript of the "Change of Plea" proceeding, concluded that Plaintiff would still be required to serve the three year MSR term, even though the court had clearly failed to admonish plaintiff regarding a requirement to serve the additional three year sentence term on MSR after completing sentence he agreed to serve as part of the negotiated plea agreement for the home invasion charge. Attached hereto (as Attachments 34-39) is a copy of the Report of Proceeding in which Judge Simpson denied the Plaintiff's petition (id.). Further, in reaching his conclusion, Judge Simpson amended the Order of the Mittimus to include the

additional three year MSR term (id. at 36-37), even though the court did not have jurisdiction to do so. Plaintiff filed a motion to reconsider on December 30th, 2009 (Attachment 33) which went before the Honorable Luciano Panici (Judge Panichi), who denied the motion (id.). Plaintiff filed a timely notice of appeal, which went before the Honorable Marjorie C. Laws (Judge Laws), who appointed the Office of the Cook County Public Defender to represent Plaintiff on appeal. State Appellant Defender Lester Finkle was assigned to the case (Attachments 40-48); and, after completely examining the pertinent record of the matter, Mr. Finkle filed a Finley motion in which alleged that there was no issue(s) of merit to present to the appellate court and requested that he be permitted to withdraw from the case and the motion was granted (id.). On December 8th, 2010, the Appellate Court granted the motion filed by Mr. Finley (Attachment 49-50). Plaintiff ultimately ended up having to serve an additional year and a half in prison based on before being discharged. He was never released on MSR; so the 3 years he would have had to serve on MSR in outside of prison was cut in half.

Because Plaintiff is alleging in this action that his rights to due process were violated, and is also alleging pendent party state-law claims, this Court/has jurisdiction over this matter pursuant to 28 U.S.C. Sec(s) 1331, 1332, 1343 and 28 U.S.C 1367(a). Furthermore, because the acts alleged in this action were

committed in Cook County, Illinois, by persons who at all times material to this matter resided in Cook County, Illinois, venue is proper in this United States District Court for the Northern District of Illinois, Eastern Division.

PARTIES

1. Plaintiff, BEN Y. (YEHUDAH) WHITFIELD, is currently a resident of Chicago, in Cook County, Illinois; but, during all times material to this matter, was in the custody of Cook County Jail, in Chicago, Illinois, Markham Courthouse and the Illinois Department of Corrections.

2. Defendant, LESTER FINKLE, during all times material to this matter, was an Appellate Defender for the Illinois Cook County Public Defender's Office and represented Plaintiff during a period of time while this matter was before the Illinois Appellate Court regarding a habeas corpus petition Plaintiff had filed, and was denied, in criminal court.

3. Defendant, LUCIANO PANICI, during all times material to this matter, was acting in his official capacity of a judge for the Circuit Court of Cook County, Illinois, 6th Municipal District, Criminal Division (Markham Courthouse in Markham, Illinois).

4. Defendant, DOUGLAS J. SIMPSON, during all times material to this matter, was acting in his official capacity of a judge for the Circuit Court of Cook County, Illinois, 6th Municipal District, Criminal Division (Markham Courthouse).

5. Defendant, COOK COUNTY, ILLINOIS, is a county in the United States of Illinois with a county seat in Chicago; address: 69 W. Washington, Suite 500, Chicago, IL60602.

6. Defendant, COOK COUNTY PUBLIC DEFENDER'S OFFICE, located at 69 W. Washington Street, 16th Floor, Chicago, IL 60602, during all times material to this matter, was responsible for providing free and effective assistance of counsel to those who could not afford to hire an attorney for representation, or was responsible for assuring such.

STATEMENT OF CLAIM

7. Defendant, LESTER FINKLE, who represented Plaintiff on appeal while this matter was pending as a criminal matter, is being sued in his individual and official capacities for violating Plaintiff's right to effective assistance of counsel by failing to ensure that Plaintiff received the benefit of a plea agreement made between the State and Plaintiff, pursuant to Sup. Ct. Rule 402. Mr. Finkle is also being sued for violating all other constitutional and state rights pertinent to this

matter, including (but not limited to) his being negligent in his representation on behalf of Plaintiff regarding this matter and is also being sued for official misconduct.

8. Defendant, Honorable LUCIANO PANICHI (Judge Panici), is being sued in his individual and official capacities for violating Plaintiff's rights by participating in, condoning and/or acquiescing the violation of Plaintiff's rights under the United States and Illinois Constitution(s) and all statutory rights pertinent to this matter, including (but not limited to) Ill. Sup. Ct. Rule 402, with regards to receiving the benefit of a plea agreement made between the State and Plaintiff. The act of Judge Panici was in furtherance of another judge's act who not only failed to comply with the requirement(s) of Ill. Sup. Ct. Rule 402, but also inappropriately amended the Order of Sentence (of July 28th, 1998) originally entered regarding this matter, though he had no jurisdiction to do so, or exceeded whatever jurisdiction he had, which substantially enhanced the sentence Plaintiff was originally ordered to serve. Furthermore, Judge Laws had no authority to exercise jurisdiction over this matter, or exceeded whatever jurisdiction he may have had with regards to this matter. Claims of Official Misconduct and Custodial Negligence are also being alleged.

9. Defendant, Honorable DOUGLAS J. SIMPSON (Judge Simpson), is being sued in his individual and official capacities for violating Plaintiff's rights by participating in, condoning and/or acquiescing the violation of Plaintiff's rights under the United States and Illinois Constitution(s) and all statutory rights pertinent to this matter, including (but not limited to) Ill. Sup. Ct. Rule 402, with regards to receiving the benefit of a plea agreement made between the State and Plaintiff. Judge Laws not only failed to comply with the requirement(s) of Ill. Sup. Ct. Rule 402, but also inappropriately amended the Order of Sentence (of July 28th, 1998) originally entered regarding this matter, though he had no jurisdiction to do so, or exceeded whatever jurisdiction he had, which substantially enhanced the sentence Plaintiff was originally ordered to serve. Claims of Official Misconduct and Custodial Negligence are also being alleged.

10. Defendant, COOK COUNTY, ILLINOIS, is being sued under the theory of *respondeat superior* and for failing to ensure the proper training of the above officials named in this suit, and/or failing to ensure that they substantially complied with all federal and state provisions pertinent to this matter; and is also being sued for custodial negligence.

11. Defendant, COOK COUNTY PUBLIC DEFENDER'S OFFICE, is being sued under the theory of *respondeat superior* and for failing to ensure the proper

training of the above officials named in this suit, and/or failing to ensure that they substantially complied with all federal and state provisions pertinent to this matter.

RELIEF/DAMAGES

12. Plaintiff's unlawful incarceration prevented him from being able to establish himself in the work force and from getting the education he desired. Furthermore, during the time Plaintiff was incarcerated as the result of the above violations, he suffered a number of physical injuries resulting from the prison conditions and was subjected to on-going violations of his rights by prison officials. Plaintiff also experienced mental/psychological and emotional anguish and/or injuries as the result of all above violations of his rights and is (therefore) demanding five million American dollars (\$2,000,000.00) in compensatory damages and five million American dollars (\$3,000,000.00) in punitive damages.

13. Plaintiff also seeks injunctive relief, to void the amendment of the sentencing order.

Plaintiff demands trial by jury

CONCLUSION

WHEREFORE, it is prayed that Plaintiff will be awarded the above damages sought; and that the Court will grant any additional relief deemed appropriate in the interest of justice.

Signed on this 3rd day of July, 2013

/s/ BenYehudah Whitfield

BenYehudah Whitfield
11256 S. Normal
Chicago, IL 60653
(773) 610 - 8647

PEOPLE OF THE STATE OF ILLINOIS)

v.)

Ben Whitford,)

Defendant)

) NO. 65161

RECEIVED
205 AUG 23 1999
CLERK OF THE
CIRCUIT COURT
OF COOK COUNTY
ILLINOIS
60000

ORDER

This matter coming to be heard at Defendant's sentencing, all parties having due notice, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED:

Defendant is credited for the following time served in pretrial custody in this case:

from 12/7/94 thru 7/28/95 = 1695 days

from _____ thru _____ = _____ days

ENTERED
SIXTH MUNICIPAL DISTRICT
CIRCUIT COURT OF COOK COUNTY

from _____ thru _____ = _____ days JUL 28 1999

from _____ thru _____ = _____ days ASSOC. JUDGE PAUL J. NEALIS-330-1576

from _____ thru _____ = _____ days

TOTAL DAYS = 1695

DEFENSE ATTORNEY:

M. Coffey
Hill

ASST. STATE'S ATTORNEY:

Ryan

JUDGE

158

Judge's No.

ATTACHMENT 2

Cook
(County)

(Municipal)

DEPARTMENT

(Division)

(Dist)

Criminal

People of the State of Illinois

v.
Defendant

AUG 5th 1996
No. 95-CR-21839st

Ben Whitefield

ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The defendant having been adjudged guilty of committing the offenses enumerated below,

IT IS ORDERED that the defendant Ben Whitefield
be and he is hereby sentenced to the Illinois Department of Corrections as follows:

Date 10/6/96 The Honorable Deborah M. Dooling
Sentenced the defendant to Three (3) years
on both counts. Case to run consecutive to
95-CB-60000. Served 457 days in Custody. Credit
for time in custody was given both on this case &
95-CB-60000.

OCCURRENCE 6/22/95

Stay of sentence 11/4/96

Ill. Rev. Stat.

Offense Aggravated Battery Ch. 720-5 Sec. 12-4(B)(6)
Par.

Offense Aggravated Battery Ch. 720-5 Sec. 12-4(B)(6)
Par.

Offense _____ Ch. _____ Sec. _____ Par. _____

Offense _____ Ch. _____ Sec. _____ Par. _____

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY:

Deputy Clerk

DATED: 10/2/96 BRANCH CT. Criminal ENTER: Deborah M. Dooling 18A
Judge CODE

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant _____

Police Individual Record No. 0800361 Illinois Bureau Identification No. _____

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

Cook
(County)Sub
(Municipal)

DEPARTMENT

Felony
(Division)

District

People of the State of Illinois

v.

Ben Y. Whitfield

Defendant

NO. 95 CR 61306 ADK
I. R. # 23
S. I. D. # 025-591030ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The defendant having been adjudged guilty of committing the offense(s) enumerated below,

IT IS ORDERED that the defendant Ben Y. Whitfield be and is here
sentenced to the ILLINOIS DEPARTMENT OF CORRECTIONS AS FOLLOWS:The Honorable Judge Paul Nease has
sentenced the Def to:C#3 25 yrs. IDoc Credit for 1695 days
TCS/TASAll remaining counts Nolle ProsserC# 1, 2, 4, 5, 6, 7, 8, 89, 10

Statutory Citation

Offense Home Invasion 720-5 ILCS 12/11(A)(2)Offense _____ ILCS /Offense _____ ILCS /Offense _____ ILCS /

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him/her to the
Illinois Department of Corrections.IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him
her in the manner provided by law until the above sentence is fulfilled.

PREPARED BY

DEPUTY CLERK

Aurelia Pucinski

ENTER:

JUDGE

JUDGE'S NO.

BRANCH COURT

DATE

7/28/99

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT - SIXTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS)

v.)

Ben Whitford,)
Defendant)

) NO. 75-16-
6000

RECEIVED
2005 AUG 23 AM 11:30
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY

ORDER

This matter coming to be heard at Defendant's sentencing, all parties having due notice, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED:

Defendant is credited for the following time served in pretrial custody in this case:

from 12/7/94 thru 7/28/95 = 1695 days

from _____ thru _____ = _____ days

ENTERED
SIXTH MUNICIPAL DISTRICT
CIRCUIT COURT OF COOK COUNTY

from _____ thru _____ = _____ days

JUL 28 1999

from _____ thru _____ = _____ days ASSOC. JUDGE PAUL J. NEALIS-330-157E

from _____ thru _____ = _____ days

TOTAL DAYS = 1695

DEFENSE ATTORNEY: M. Coffey

ASST. STATE'S ATTORNEY: Hill

PJW
JUDGE

158

Judge's No.

ATTACHMENT 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Cook
(County)

(Municipal)

DEPARTMENT

(Division)

(Dist)

Criminal

People of the State of Illinois

v.
Defendant} No. 95-CR-21839-1
AUG 1 1996Ben WhitefieldORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The defendant having been adjudged guilty of committing the offenses enumerated below,

IT IS ORDERED that the defendant Ben Whitefield
be and he is hereby sentenced to the Illinois Department of Corrections as follows:

Date 10/2/96 The Honorable Deborah M. Dooling
Sentenced the defendant to Three (3) years
on both counts. Case to run consecutive to
95-CB-60000. Served 457 days in custody. Credit
for time in custody was given both on this case &
95-CB-60000.

OCCURRENCE 6/22/95Stay of sentence 11/4/96

Ill. Rev. Stat.

Offense Aggravated BatteryCh. 720-5 Sec. 12-4(B)(6) Par. _____Offense Aggravated BatteryCh. 720-5 Sec. 12-4(B)(6) Par. _____

Offense _____

Ch. _____ Sec. _____ Par. _____

Offense _____

Ch. _____ Sec. _____ Par. _____

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY: _____

Deputy Clerk

DATED: 10/2/96 BRANCH CT. Criminal

ENTER: _____

Judge

CODE

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant _____

Police Individual Record No. 0800361 Illinois Bureau Identification No. _____

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

Benjefuslah Whitfield

1 STATE OF ILLINOIS)
2 COUNTY OF C O O K)
SS:

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 MUNICIPAL DEPARTMENT-SIXTH MUNICIPAL DISTRICT

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS)
7 VS.) Case No. 95 C6-60000-01
BEN WHITFIELD.) Charge: Home Invasion

8 CHANGE OF PLEA
9

10 REPORT OF PROCEEDINGS of the hearing had
11 before the Honorable PAUL J. NEALIS, on the 28th day of
12 July, 1999, in Markham, Illinois.

13 APPEARANCES:

14 HON. RICHARD A. DEVINE,
15 State's Attorney of Cook County, by:
16 MR. MICHAEL CLANCY,
Assistant State's Attorney,
Appeared for the People;

17
18 MS. RITA A. FRY,
19 Public Defender of Cook County, by:
20 MR. PATRICK MC KEIGUE,
Assistant Public Defender,
Appeared for the Defendant.

21
22 Nicola Vogelgesang
23 License No. 084-001241
Official Court Reporter
16501 S. Kedzie Parkway
24 Markham, Illinois 60428

ATTACHMENT
4

Bonifet Hadelah Whitfield

1

INDEX

2 Date: July 28, 1999

3 Pages: 1 - 12

4

5 Change of Plea

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Benjefudeh Whitfield

1 THE CLERK: Ben Whitfield, in custody.

2 MR. MC KEIGUE: Whitfield.

3 For the record, Patrick McKeigue on behalf of
4 Ben Whitfield, before the bench. This matter is on the
5 call pursuant to the remand from the Appellate Court for
6 retrial. We've had discussions with the State. And
7 pursuant to these discussions, Judge, we'll be waiving
8 any motions, of course, entering plea of guilty.

9 Our understanding of the agreement was the
10 State, in exchange for a plea of guilty to the charge of
11 home invasion, State will recommend a period of 25 years
12 Illinois Department of Corrections.

13 THE COURT: Alright, Mr. Whitfield, you heard what
14 your lawyer just said? What is your -- let me get a
15 copy of the indictment.

16 MR. CLANCY: It would be on Count Number Three.
17 That was the count that all the other counts merged into
18 after the verdict of guilty. All the other home
19 invasions merged into, I should say.

20 THE COURT: Okay, Mr. Whitfield, what is your plea
21 to this Count Number Three of this Information, 95
22 C6-60000-01, which alleges that on or about December
23 7th, 1994, at and within Cook County, Illinois, you then
24 committed the offense of home invasion in that you not

ATTACHMENT
6

Bonjean Hulda Whitfield

1 being a peace officer acting in the line of duty
2 knowingly entered the dwelling place of another, to wit:
3 18809 King Road, Homewood, Illinois, all this in Cook
4 County, when you knew or had reason to know that one or
5 more persons were present and intentionally caused
6 injury to any of the persons, to wit: Beverly Mahoney,
7 M-a-h-o-n-e-y, within such dwelling place, by binding
8 her hands, causing redness and swelling, in violation of
9 720 ILCS Act 5 section 12-11(A) (2) of the Illinois
10 Compiled Statutes, 1992, as amended: Guilty or not
11 guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: Before I accept your plea of guilty, I
14 want to make sure you understand the rights you give up
15 when you plead guilty. If you don't understand what I
16 say, please stop me, ask any questions you have, or
17 speak to your attorney. Will you do that?

18 THE DEFENDANT: Yes.

19 THE COURT: This is a Class X felony. A Class X
20 felony in this State carries with it a possible
21 punishment of from 6 to 30 years in the Illinois
22 Department of Corrections plus three years mandatory
23 supervised release. You're not entitled to periodic
24 imprisonment, probation, or conditional discharge. You

ATTACHMENT
7

Bonifeckudah Whitfield

1 could be fined up to ten thousand dollars on this matter
2 as well. Knowing the possible punishment, you still
3 wish to plead guilty?

4 THE DEFENDANT: Yes.

5 THE COURT: You have the right to plead not guilty
6 and force the State to prove this charge against you
7 beyond a reasonable doubt. You have the right to have a
8 trial by this Court or a jury. In a jury trial, twelve
9 people would be chosen in part by you and your attorney.
10 They would listen to the evidence, the arguments of the
11 attorneys, and my instructions on the law and make the
12 determination if the State has proven this charge
13 against you beyond a reasonable doubt. Their verdict
14 would have to be unanimous and in writing. Do you
15 understand what a jury is and what a jury does?

16 THE DEFENDANT: Yes.

17 THE COURT: Your lawyer's handed me a document
18 entitled "jury waiver." Is this your signature on the
19 jury waiver?

20 THE DEFENDANT: Yes.

21 THE COURT: By signing that jury waiver, you waive
22 your right to a jury. Is that what you wish to do?

23 THE DEFENDANT: Yes.

24 THE COURT: Let the record reflect the defendant has

ATTACHMENT
8

Banjeet Sudah Whitfield

1 made a knowing, intelligent waiver of jury. It will be
2 stamp filed and made a permanent part of the record.

3 You also give up your right to testify or
4 remain silent on your own behalf, to cross examine and
5 confront the witnesses against you, to present evidence
6 on your own behalf, to object to unreasonable searches
7 and seizures, and object to any identification evidence
8 or any statements given by you. In short, when you
9 plead guilty, you give up those rights. You understand
10 the rights you give up when you plead guilty?

11 THE DEFENDANT: Yes.

12 THE COURT: Have any threats, force, or promises
13 been made to you in order for you to enter this plea of
14 guilty?

15 THE DEFENDANT: No.

16 THE COURT: Are you entering this plea of guilty of
17 your own free will?

18 THE DEFENDANT: Yes.

19 THE COURT: State waive PSI?

20 MR. CLANCY: Yes.

21 THE COURT: How old are you?

22 THE DEFENDANT: 31.

23 THE COURT: 31. State, may I have a factual basis
24 for the plea?

ATTACHMENT
9

Benjehudah Whitfield.

1 MR. CLANCY: Judge, the factual basis would be the
2 evidence that was presented on May 30th of 1996 when the
3 jury trial began, all those witnesses who would testify
4 during that jury trial, all the exhibits that were
5 admitted during that trial, all of which is of record
6 beginning April 30th of 1996 with the jury trial,
7 concluding on May second of 1996, for which Your Honor
8 presided.

9 MR. MC KEIGUE: Your Honor, we would stipulate to
10 that. Your Honor did preside over that jury trial, are
11 aware of the factual basis. We will stipulate to that.

12 THE COURT: Alright, you stipulate to -- stipulate
13 to that testimony?

14 MR. MC KEIGUE: Yes.

15 THE COURT: Alright, is that what you're pleading
16 guilty to, the home invasion on that day?

17 THE DEFENDANT: Yes.

18 THE COURT: Not being a police officer at that time?

19 THE DEFENDANT: Yes.

20 THE COURT: I find a factual basis exists for the
21 plea, that the defendant understands the nature of the
22 charge against him, its possible penalties, and his
23 legal rights. I further find the defendant's entered
24 this plea knowingly and voluntarily. I accept the

Benjy Hush Whitfield

1 defendant's plea of guilt to the charge of home
2 invasion. I enter judgment on the finding on Count
3 Number Three. Your lawyer's handed me a document
4 intitled "waiver of presentence report." Is that your
5 your signature on that document?

6 THE DEFENDANT: Yes.

7 THE COURT: By signing this document, you're telling
8 me you give up your right to a presentence report
9 generated by the Probation Department that would tell me
10 all about your life history. Is that what you wish to
11 do?

12 THE DEFENDANT: Yes.

13 THE COURT: State waive PSI?

14 MR. CLANCY: Yes, Judge.

15 THE COURT: I do have an old PSI. He's been in
16 custody since then. And anything else, Mr. McKeigue,
17 with respect to the PSI?

18 MR. MC KEIGUE: No, Your Honor. We'll stand on
19 the -- stand on the agreement.

20 THE COURT: Alright. Aggravation, State?

21 MR. CLANCY: Judge, we rest on the agreement.

22 THE COURT: Alright. Mitigation, Mr. McKeigue?

23 MR. MC KEIGUE: Also stand on the agreement, Your
24 Honor.

**ATTACHMENT
11**

Bonfield

1 THE COURT: Do you want to say anything before I
2 impose sentence, Mr. Whitfield? The law provides you an
3 opportunity to say something. You don't have to if you
4 don't want to, but you may if you'd like.

5 THE DEFENDANT: I would like to say that I am truly
6 sorry for the crime that I committed against Miss
7 Beverly. I would like to say I'm sorry for the crimes I
8 committed against Miss Beverly Mahoney.

9 THE COURT: Alright. Alright. Well, I'm glad to
10 hear you say that. That's -- they're elderly people,
11 and it was -- it's a terrible thing. Your home is
12 supposed to be your castle. I'll go along with the
13 agreement as to Count Number Three,, and that's plea of
14 guilty, jury waived, finding of guilty to Count Number
15 Three, judgment on the finding. Defendant is sentenced
16 to 25 years IDOC, Illinois Department of Corrections.
17 Credit for how many days, Mr. McKeigue?

18 MR. MC KEIGUE: 1695.

19 THE COURT: 1695 days, time considered served, time
20 actually served.

21 Do you understand the sentence I've imposed?

22 THE DEFENDANT: Uhm, yeah.

23 THE COURT: You have 30 days in which to file a
24 motion to withdraw your plea of guilty or to reconsider

ATTACHMENT
12

Bonfieldah Whitfield

1 the sentence I just imposed. In order to perfect that
2 right, you must within 30 days of today file a written
3 motion asking to have the plea and the judgment vacated.
4 In the motion you must set forth the ground or the basis
5 for the motion. If you're challenging the sentence, you
6 must move to withdraw the plea of guilty because this is
7 an agreed disposition.

8 If you're indigent, a copy of the transcript of
9 these proceedings will be provided to you at no cost and
10 counsel will be appointed to assist you in preparing the
11 motion. If you're allowed to withdraw your plea of
12 guilty, all the other counts that were now being nolle'd
13 or dismissed against you could be reinstated, and you'd
14 have to go to trial on these as well, and this plea
15 agreement would be null and void as well. Is that
16 clear?

17 THE DEFENDANT: Yes. I would like to know, do I, do
18 I get day-for-day for that one thousand?

19 THE COURT: You get day-for-day, but I don't compute
20 the days. I set them down to the Illinois Department of
21 Corrections. Illinois Department of Corrections gives
22 you the day-for-day credit, alright? This is not an 85
23 percent. This is not a -- this will be before that.
24 This is not an 85 percent. This is not a hundred

Buffy Bulah Whitfield-

1 percent. It's a 50 percent day-to-day credit, if your
2 credit's good. You could screw your good time up, you
3 know that, right?

4 THE DEFENDANT: Uh-huh.

5 THE COURT: By your behavior. But that's what you
6 get. I'm giving you credit for those number of days
7 you're in. Alright? Any questions?

8 THE DEFENDANT: No.

9 THE COURT: Alright. So you understand your appeal
10 rights as well?

11 THE DEFENDANT: Yes.

12 THE COURT: Alright. Motion State nolle Counts
13 Number One, Two, Four, Five, Six, Seven, Eight, Nine,
14 and Ten?

15 MR. CLANCY: Yes, Judge.

16 THE COURT: That's the order.

17 MR. MC KEIGUE: Defendant demands trial.

18 THE COURT: Alright.

19 MR. MC KEIGUE: Thank you.

20 (Which were all the proceedings had in
21 the above-entitled cause.)

22

23

24

Bonita Hudele Whitfield

1 STATE OF ILLINOIS)
2) SS:
COUNTY OF COOK)

3

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT - SIXTH MUNICIPAL DISTRICT

5

6

7 I, Nicola Vogelgesang, Official Court Reporter
8 of the Circuit Court of Cook County, Municipal
9 Department - Sixth Municipal District, do hereby certify
10 that I reported in shorthand the proceedings had on the
11 hearing in the aforementioned cause; that I thereafter
12 caused the foregoing to be transcribed into typewriting,
13 which I hereby certify to be a true and accurate
14 transcript of the Report of Proceedings had before the
15 Honorable PAUL J. NEALIS, Judge of said court.

16

17

18

19

20

21

22

23

Dated this 31st day of
August, 2010.

24

Nicola Vogelgesang

Official Court Reporter

No. 084-001241

1 STATE OF ILLINOIS)
2) SS:
COUNTY OF COOK)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT, CRIMINAL DIVISION

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS,)
7 Plaintiff,)
vs.) No. 95CR21039-01
8 BEN WHITFIELD,)
9 Defendant.)

10

11 REPORT OF PROCEEDINGS had in the
12 above-entitled cause before the Honorable DEBORAH MARY
13 DOOLING, Judge of said court, Criminal Division, on the
14 2nd day of October, A.D. 1996.

15 PRESENT: HON. RICHARD A. DEVINE,
16 State's Attorney of Cook County, by
17 MR. NICK AVVANITIS
Assistant State's Attorney,
on behalf of the People;

18 HON. RITA A. FRY.,
19 Public Defender of Cook County, by
MS. TERRI SMITH
20 Assistant Public Defender,
on behalf of the Defendant.

21 Sandra Lio, CSR
22 Official Court Reporter
23 License No. 084-001897
24 2121 Euclid Avenue, Room 60
Rolling Meadows, Illinois 60008

1 THE CLERK: Ben Whitfield.

2 THE SHERIFF: Coming out.

3 MS. SMITH: Good morning.

4 THE COURT: Good morning. How are you?

5 MS. SMITH: I'm fine.

6 This is Mr. Whitfield. This is a case that Mr.
7 Cohen had previously represented the defendant. I
8 inherited it.

9 I'm asking for a thirty-day date to file my
10 answer, and at that time we'll either set it for trial or
11 do a conference on that date.

12 THE COURT: Do you have an answer on file?

13 MS. SMITH: I do not.

14 THE COURT: I don't see an answer on file.

15 MR. AVVANITIS: Want to pass it?

16 MS. SMITH: Hang on a second, Judge. You know what?
17 We're going to proceed to a conference.

18 THE COURT: Mr. Whitfield, do you want your
19 attorney-- what your attorney is saying is that you want
20 a conference. That means that the State tells me what
21 the facts of the case are and then I hear if you have any
22 criminal record.

23 After that, your attorney tells me anything in
24 your favor in mitigation. Then, I hear both sides, and

1 then I tell you what I'll do if you plead guilty. You
2 don't have to plead guilty. You have an absolute right
3 to plead not guilty.

4 After the conference you can say, Judge, I
5 don't want that sentence. I want a bench or jury, but
6 just because you don't like the outcome of the conference
7 or the offer, you can't take your case out of my room

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you still want me to conference?

11 THE DEFENDANT: Yes.

12 THE COURT: Go ahead.

13 MR. AVVANITIS: Judge, if I can pass it for a
14 minute?

15 THE COURT: Okay.

16 MS. SMITH: Thank you.

17 (The court heard other matters;
18 thereafter, the following
19 proceedings were had in the
20 aforementioned matter, to-wit:)

21 THE CLERK: Ben Whitfield.

22 THE SHERIFF: Coming out.

23 MS. SMITH: We'd be asking for a conference on Mr.
24 Whitfield.

1 THE COURT: I admonished him already or no?

2 MR. AVVANITIS: Judge, this case happened on June
3 22nd, 1995, while the defendant was being held in custody
4 at the Cook County jail pending charges of home invasion
5 which were pending in Markham.

6 Your Honor, what happened in this case was that
7 a correctional officer, Henry Page, and Sergeant Burn
8 were in the area of the Cook County jail where the
9 defendant who they would identify in open court was as
10 well as another inmate. (phonetic)

11 At that time, Judge, Page had reordered the
12 defendant and another individual to go back into their
13 cells. The defendant refused, indicating that he wanted
14 some medication of some type.

15 When the officer, Mr. Page, insisted that he go
16 to his cell, the defendant then struck him in the face
17 three times at which time Sergeant Burn was in the area,
18 came to the assistance of Officer Page. At which point
19 the defendant struck Sergeant Burn in the face as well.

20 At that time, Judge, a struggle ensued between
21 the two inmates and the correctional officers. Both
22 correctional officers were in full uniform, your Honor,
23 and in their correctional outfits.

24 The defendant was eventually subdued and the

1 disturbance was quelled at that point.

2 Page, Judge, received minor injuries, bruises
3 to the left side of his face and upper lip and hand.

4 Sergeant Burn, Judge, received a black eye to his left
5 eye and a laceration to his elbow, a bruise to his
6 knuckle. (phonetic)

7 With respect to the criminal history of the
8 defendant, Judge, with respect to-- this is a
9 consecutive-type situation since he was incarcerated
10 pending another case.

11 The Markham case, Judge, was disposed of, I
12 believe, yesterday. I spoke with the witnesses on that
13 case, Judge, and the defendant was sentenced to forty
14 years Illinois Department of Corrections by Judge Nellis
15 yesterday.

16 This would be a consecutive sentence, Judge.
17 This is a Class Three offense. His background, your
18 Honor, is that on November the 10th, 1997, he received
19 four years for residential burglary. On January 30th of
20 1987, he received thirty months probation for burglary.

21 MS. SMITH: Mr. Whitfield is twenty-eight years old.
22 He's single. He was at the time of his arrest living
23 with his girlfriend and their two children. He was also
24 a student at a trade school in Carol Stream, Illinois,

1 learning construction work.

2 Judge, as your Honor knows, he was sentenced to
3 forty years on the other case. We'd ask your Honor to go
4 along with the sentence agreed upon, disposition of two
5 years.

6 THE COURT: No. If he wants three, he can have
7 three. Talk to him.

8 Pass it.

9 (The court heard other matters;
10 thereafter, the following
11 proceedings were had in the
12 aforementioned matter, to-wit:)

13 MS. SMITH: He wants to take it.

14 THE COURT: Okay.

15 MS. SMITH: You're giving him thirty days, won't
16 you?

17 THE COURT: I can't. I will.

18 Mr. Whitfield, you are here because you are
19 charged with-- Are there two counts? Because there are
20 two victims?

21 MS. SMITH: Yes.

22 MR. AVVANITIS: Yes.

23 Judge, both counts, two counts of aggravated
24 battery.

1 THE COURT: You are here because you are charged
2 with two counts of aggravated battery. Have you seen a
3 copy of that charge, and has your attorney had the
4 opportunity to go over the charge with you?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand what you are charged
7 with?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand what aggravated
10 battery means?

11 THE DEFENDANT: Yes.

12 THE COURT: How do you plead to the charge of
13 aggravated battery, guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Sir, aggravated battery is a Class Two--
16 I'm sorry, Class Three felony. That means upon your plea
17 of guilty, I could send you to the Illinois Department of
18 Corrections for anywhere from two to five -- five to ten
19 years. You would receive a period of mandatory
20 supervised release of one year. That's like parole. It
21 could be revoked on a violation, and you would be sent
22 back to the penitentiary. I could fine you up to and
23 including \$10,000. Minimum sentence I can give you is
24 probation.

1 Do you understand the possible penalties?

2 THE DEFENDANT: Yes.

3 THE COURT: Understanding those penalties, do you
4 still wish to plead guilty?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that this three-year
7 sentence it's going to run consecutive which means will
8 run after the forty-year sentence that Judge Nellis gave
9 you?

10 THE DEFENDANT: Yes.

11 THE COURT: Understanding all of that, do you still
12 want to plead guilty?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand you have a right to
15 plead not guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: Before I accept your plea of guilty, I
18 want to make sure that you understand the rights that you
19 give up when you plead guilty.

20 Do you understand that there's not going to be
21 a trial of any kind?

22 THE DEFENDANT: Yes.

23 THE COURT: No bench trial, no jury trial. A jury
24 would consist of twelve citizens from Cook County. They

1 would be selected by your attorney and the state's
2 attorney. They would hear the facts in the case. They
3 would hear the arguments of the lawyers. They would hear
4 my instructions on the law, and they would be the ones to
5 determine if you were guilty or not guilty.

6 Do you understand what a jury is, and what a
7 jury does?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you want to give up your right to a
10 trial by jury?

11 THE DEFENDANT: Yes.

12 THE COURT: I have before me a signed and executed
13 jury waiver. Is this your signature on the form?

14 THE DEFENDANT: Yes.

15 THE COURT: Sir, do you understand when you signed
16 that form, you said, Judge, I do not want a trial by
17 jury?

18 THE DEFENDANT: Yes.

19 THE COURT: The waiver is accepted and made a part
20 of the record.

21 You also give up your right to see and confront
22 the witnesses who would testify against you. That means
23 to see them face-to-face in this courtroom and have your
24 attorney cross-examine them by asking them questions.

1 You give up your right to subpoena witnesses to
2 testify in your own behalf. You give up your right to
3 present any possible defense. You give up your right to
4 remain silent.

5 You also give up your right to a speedy trial,
6 which means that you must be tried within 120 days of
7 your custody or within 160 days if you are out on bond.

8 You give up your right to be represented by an
9 attorney at trial and a free attorney if you can't afford
10 one and once again, you give up your right to hold the
11 State to their burden of proving you guilty beyond
12 a reasonable doubt.

13 Do you understand all of that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT; Except for the fact that I'm going to
16 sentence you to three years Illinois Department of
17 corrections, it's going to run consecutively to the case
18 number--

19 MR. AVVANITIS: 95-C6-60000.

20 THE COURT: Are you sure it's that many zeros?

21 MR. AVVANITIS; That's--

22 THE COURT: 660000? Except for the fact you are
23 going to get three years and that's going to run off the
24 sentence that Judge Nellis gave except for that, did

1 anybody promise you anything else to get you to plead
2 guilty?

3 THE DEFENDANT: No.

4 THE COURT: Has anyone forced you to plead guilty?

5 THE DEFENDANT: No.

6 THE COURT: You are pleading guilty of your own
7 free will?

8 THE DEFENDANT: Yes.

9 THE COURT; Both sides willing to stipulate to the
10 conference held on the record in open court in the
11 presence of the defendant would constitute a sufficient
12 factual basis to support the plea of guilty to both
13 counts of aggravated battery?

14 MR. AVVANITIS: Yes.

15 MS. SMITH: So stipulate.

16 THE COURT: How old are you again, sir?

17 THE DEFENDANT: Thirty.

18 THE COURT: I will accept your plea of guilty to the
19 charge of aggravated battery, both counts one and two
20 will be findings of guilty in the manner and form as
21 charged and judgment will be entered upon the findings.

22 Ms. Smith, does your client want to give up
23 his right to presentence investigation today?

24 MS. SMITH: Yes.

1 THE COURT: Mr. Whitfield, a presentence
2 investigation actually-- Mr. Whitfield-- Mr. Whitfield, a
3 presentence investigation would be a written report about
4 your social history and your criminal background. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: I have before me a signed and executed
8 presentence investigation waiver. Is that your signature
9 on it?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand when you signed it,
12 you said, Judge, I do not want a presentence
13 investigation?

14 THE DEFENDANT: Yes.

15 THE COURT: Waiver is accepted and made part of the
16 record.

17 Anything else?

18 MR. AVVANITIS: No.

19 MS. SMITH: No.

20 THE COURT: Want to tell me anything, Mr. Whitfield
21 before I sentence you?

22 THE DEFENDANT: No.

23 THE COURT: You're sentenced to three years Illinois
24 Department of Corrections. That sentence shall run

1 consecutively which means shall run after the sentence
2 you received in 96-C-660000.

3 I have to tell you one more thing. You have a
4 right to appeal or to file a motion to reconsider the
5 judgment entered on your plea of guilty. But to do so,
6 you must file a written motion in this court within
7 thirty days asking to have the judgment vacated which
8 means set aside and for leave to withdraw your plea of
9 guilty setting forth the grounds in the motion.

10 If you are without funds and an attorney, one
11 will be appointed to assist, and a transcript will be
12 given to you free of charge. If the motion is granted,
13 all charges would be reinstated, and we would proceed to
14 trial. Any issues not raised in the motion to vacate the
15 judgment and withdraw your plea of guilty, will be waived
16 on appeal. That means that any errors that you think
17 occurred have to be put in your written motion, otherwise
18 you can't argue it later on in your appeal. Do you
19 understand?

20 THE DEFENDANT: Yes.

21 THE COURT: You want a stay of mitt until 11-4-96?

22 MS. SMITH: Yes.

23 THE COURT: Okay. That's the order.

24 Good luck.

1 MS. SMITH: He has been in custody 457 days on this
2 case. I know he was in custody on the other case, but he
3 was also in custody on this case because they set a bond
4 on this one also.

5 THE COURT: Okay. Well, I'll put the 457 days which
6 is the same amount of time that he got on Judge Nellis'
7 case.

8 MS. SMITH: I don't know that because that was--

9 THE COURT: He got picked up on this first

10 MS. SMITH: No, no. What I'm saying is he was
11 also-- He was in custody on both of them at the same
12 time.

13 THE COURT: Since June 22nd. Bond was set on this
14 case on July 10th, '95. Okay. I assume he was charged
15 on June 22nd. He's already in custody.

16 MS. SMITH: Right.

17 THE COURT: Okay. That will be the order.

18 (Which were all the proceedings
19 had in the aforementioned cause.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4

5 I, SANDRA LIO, Official Shorthand Reporter of
6 the Circuit Court of Cook County, Municipal Division,
7 do hereby certify that I note-read the stenotype notes
8 of Paul Marzano, a former Official Court Reporter; and
9 to the best of my ability, of the proceedings had at
10 the hearing of the aforementioned cause; that I
11 thereafter caused the foregoing to be transcribed into
12 typewriting, which I hereby certify to be a true and
13 accurate transcript of the proceedings had before the
14 Honorable Deborah Mary Dooling.

15

16

17

18

19

20

21

22

23

24



Official Shorthand Reporter
Circuit Court of Cook County
Municipal Division
License No. 084-001897

CASE: 95C6600001 S (START OF FELONY CASE)
DEFENDANT NAME: BEN Y WHITFIELD

PAGE: 043 OF 048
LST APPEAL: 10/08/96

PROD

072899-

DEF SENTENCED ILLINOIS DOC
NEALIS, PAUL J.
MARKHAM ROOM 106

C003

072899-

DEF ADVISED OF RIGHT TO APPEAL
NEALIS, PAUL J.
MARKHAM ROOM 106

090809-

CASE ADVANCED
MARKHAM

090809 0666
0900 AM

090809-

HEARING DATE ASSIGNED 091509 0672
DEF FILES FOR TRIAL TRANSCRIPTS AND A PETITION OF HABEAS CORPUS
MARKHAM 0900 AM

ENTER=CONT PF3=RETN PF7=BKW PF8=FRW PF9=APPL PF10=RESET PF12=PRINT CLEAR=EXIT
=> PRINT THE FOLLOWING PAGES PAGE: 001 THRU 048 DESTINATION _____

CASE: 95C6600001 S (START OF FELONY CASE)
DEFENDANT NAME: BEN Y WHITFIELD

PAGE: 044 OF 048
LST APPEAL: 10/08/96

PROD

091509-

DEFENDANT IN CUSTODY 000000
SIMPSON DOUGLAS J
MARKHAM ROOM 106

091509-

CONTINUANCE BY ORDER OF COURT 092509 0672
SIMPSON DOUGLAS J
MARKHAM ROOM 106 0900 AM

092509-

ORDER EXTENDED, NUNC PRO TUNC 092509 0672
3 YEARS MSR PET FOR HABEAS CORPUS DENIED SEE DRAFT ORDER OFF CALL
SIMPSON DOUGLAS J
MARKHAM ROOM 106 0900 AM

ENTER=CONT PF3=RETN PF7=BKW PF8=FRW PF9=APPL PF10=RESET PF12=PRINT CLEAR=EXIT
=> PRINT THE FOLLOWING PAGES PAGE: 001 THRU 048 DESTINATION _____

ATTACHMENT
32

CASE: 95C66000001 S (START OF FELONY CASE)

PAGE: 045 OF 048

PROD

DEFENDANT NAME: BEN

Y WHITFIELD

LST APPEAL: 10/08/96

122309-

CASE ADVANCED

122309

0666

MARKHAM

0900 AM

122309-

HEARING DATE ASSIGNED

123009

0672

DEF FILES MOTION FOR RECONSIDERATION

MARKHAM

0900 AM

123009-

PREVIOUS ORDER TO STAND

000000

PET FOR RECONSIDERATION DENIED POTS-072899

PANICI LUCIANO

MARKHAM ROOM 106

020110-

NOTICE OF NOTICE OF APP MAILED

000000

MARKHAM

ENTER=CONT PF3=RETN PF7=BKW PF8=FRW PF9=APPL PF10=RESET PF12=PRINT CLEAR=EXIT
=> PRINT THE FOLLOWING PAGES PAGE: 001 THRU 048 DESTINATION _____

10-0343

1 STATE OF ILLINOIS)

2) SS.
3 COUNTY OF COOK)4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION5 PEOPLE OF THE)
6 STATE OF ILLINOIS)
7 VS.) No. 950660000-01
8 BEN YEHUDAH WHITFIELD)9
10 REPORT OF PROCEEDINGS had at the hearing
11 of the above-entitled cause, before the Honorable
12 DOUGLAS SIMPSON, Judge of said Court, on the 25th
13 day of September, 2009.

14 PRESENT:

15 HON. ANITA ALVAREZ,
16 State's Attorney of Cook County,
Assistant State's Attorneys,
17 On behalf of the People;

18

19

20

21

22 SHIRLEY A. BEALE, CSR.
23 Official Court Reporter
16501 South Kedzie Pkwy
Markham, Illinois 60428
24 (708) 232-4410

ATTACHMENT

84

Benjehudah Whitfield

1

2 THE CLERK: Ben Whitfield.

3 THE COURT: Ben Whitfield. Mail from jail. On
4 September 8, 2009, Mr. Whitfield filed a petition
5 for habeas corpus alleging a violation in the
6 sentencing of Whitfield -- People vs. Whitfield.
7 Illinois Supreme Court case 217 Ill.2d 177.

8 I have reviewed the common-law
9 record in this case which indicates defendant was
10 sentenced in Count 3 to 25 years in the Illinois
11 Department of Corrections, credit for 1,695 days
12 time considered served. I have also reviewed the
13 mittimus on this case which reflects the same
14 sentence that I just delineated.

15 I have also reviewed a copy of
16 the transcript that I received regarding the plea
17 where in that plea, Judge Nealis did not sentence
18 Mr. Whitfield to 3 years MSR. However, when he
19 admonished Mr. Whitfield regarding the possible
20 sentence when he pled guilty pursuant to Supreme
21 Court Rule 402, he did admonish Mr. Whitfield of the
22 mandatory supervised release, and that's on page 4
23 of the transcript where he says, and I'm quoting
24 "this is a Class X felony. A Class X felony, this

ATTACHMENT

35

Benjehurah Whitfield

1 case carries with it a possible punishment up from 6
2 to 30 years in the Illinois Department of
3 Corrections plus 2 years Mandatory Supervised
4 Release.."

5 I have reviewed, as I said, the
6 transcript and the other matters. I have also
7 reviewed People vs. Holborow, a 3rd District case --
8 strike that, 4th District case, 382 Ill.App. 3d 852.
9 In that case, it was a post-conviction matter. In
10 that case, the Court found that there -- strike
11 that. The facts of that case are there was a docket
12 entry that failed to mention mandatory supervised
13 release.

14 However, during the plea,
15 defendant was admonished of the possibility of the 3
16 years mandatory supervised release. Those facts are
17 on point with the case that I have in front of me
18 now and the Holborow case, that was a
19 post-conviction case but that post-conviction was
20 properly denied and I find in this case that his
21 petition for habeas corpus is denied. That the plea
22 admonishments were proper.

23 I'm ordering the clerk to
24 correct the mittimus nunc pro tunc back to July 28,

ATTACHMENT

36

Bonfield Whitefield

1 2009 to reflect the plea of 25 years Illinois
2 Department of Corrections plus three years mandatory
3 supervised release, credit for 1,695 days and for
4 the Clerk to notify the defendant and the Department
5 of Corrections of this order. With that, see draft
6 order, I have drafted an Order to be sent. Off
7 call. Thank you.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

**ATTACHMENT
37**

1 IN THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

2 COOK COUNTY, ILLINOIS

3

4

5 I, SHIRLEY A. BEALE, an Official Court
6 Reporter for the Circuit Court of Cook County, Cook
7 Judicial Circuit of Illinois, do hereby certify that
8 I reported in shorthand the proceedings had on the
9 hearing in the above-entitled cause; that I
10 thereafter caused the foregoing to be transcribed
11 into typewriting, which I hereby certify to be a
12 true and accurate transcript of the proceedings had
13 before the Honorable DOUGLAS SIMPSON, Judge of said
14 Court.

15

16



17 Official Court Reporter

18

CSR# 084002576

19

20

21

22 Dated this 11th day

23 of August 2010

24

ATTACHMENT
38

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)

4

5 IN THE CIRCUIT COURT OF COOK COUNTY
6 COUNTY DEPARTMENT - CRIMINAL DIVISION;

7 THE PEOPLE OF THE]
8 STATE OF ILLINOIS,]
vs.] No. 95 cC6 60000-01
BEN YEHUDAH WHITFIELD.]

10 AFFIDAVIT

11

12 I, Lillie L. Davis, an Official Court
13 Reporter of the Circuit Court of Cook County, do
14 hereby certify that I have made a thorough and
15 diligent search of all stenographic notes recorded
16 by me on the 30th day of December , 2009, before the
17 Honorable LUCIANO PANICI, Judge of said court, and I
18 find no record of proceedings of the above-entitled
19 cause.

20
21
22 Lillie L. Davis, CSR, RPR
23 Official Court Reporter

24

ATTACHMENT
39

No. 10-0343

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

BEN WHITFIELD,

Defendant-Appellant.

-) Appeal from the
) Circuit Court of Cook
) County, Criminal Division.
)
) Circuit No. 95C66000001
)
) Honorable
) Luciano Panici,
) Judge presiding.

**MOTION TO WITHDRAW AS APPOINTED COUNSEL ON APPEAL BASED UPON
PENNSYLVANIA v. FINLEY (481 U.S. 551)**

The Public Defender of Cook County, Abishi C. Cunningham, Jr., through his assistant, Lester Finkle, respectfully moves this Honorable Court to grant him leave to withdraw as appointed counsel on appeal for Ben Whitfield in the above-numbered cause. In support of this motion, the following is stated:

1. A thorough analysis of the record on appeal resulted in a determination that no meritorious issues are present.
2. Pursuant to the requirements enunciated in *Pennsylvania v. Finley*, 481 U.S. 551, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987), and in accordance with presently accepted practice in the Appellate Court and in the Office of the Public Defender, a memorandum of fact and law is submitted in support of this motion.
3. After a jury trial, Mr. Whitfield was convicted of home invasion, residential burglary, and possession of a stolen motor vehicle. He was sentenced to a total of 40 years in prison. On appeal, this Court reversed and remanded for a new trial. *People v. Whitfield*, 1-96-3537 (Rule

**ATTACHMENT
40**

23 Order June 19, 1998). After remand, on July 28, 1999, Mr. Whitfield pled guilty to home invasion and was sentenced to 25 years in prison. In the instant matter, Mr. Whitfield filed a *habeas* petition, which was denied on September 25, 2009. A motion to reconsider was denied on December 30, 2009. The notice of appeal was filed February 1, 2010.

4. Mr. Whitfield is in custody, and is residing at Reg. No. N-74277, Menard Correctional Center, 711 Kaskaskia Street, P.O. Box 711, Menard, IL 62259.

5. The undersigned counsel has read the entire record. Counsel has written to Mr. Whitfield and explained the *Finley* procedure to him. Counsel has invited him to file his own response to this *Finley* motion, and has also invited him to call collect or write if he has any questions pertaining to these procedures or the appeals.

WHEREFORE, it is prayed that leave be granted to withdraw as appointed counsel on appeal.

Respectfully submitted,
ABISHI C. CUNNINGHAM, JR.
Public Defender of Cook County

By: 
Lester Finkle
Assistant Public Defender

Public Defender of Cook County
Attorney for defendant-appellant
69 West Washington Street - 15th Floor
Chicago, IL 60602
312.603.0600

ATTACHMENT
41

CERTIFICATION OF ATTORNEY

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109], the undersigned, Lester Finkle, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Lester Finkle

Lester Finkle

ATTACHMENT
42

No. 10-0343

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

BEN WHITFIELD,

Defendant-Appellant.

-) Appeal from the
-) Circuit Court of Cook
-) County, Criminal Division.
-)
-) Circuit No. 95C66000001
-)
-) Honorable
-) Luciano Panici,
-) Judge presiding.

NOTICE OF MOTION

TO: Anita Alvarez, Cook County State's Attorney, 309 Daley Center, Chicago, IL 60602
Ben Whitfield, Reg. No. N-74277, Menard Correctional Center, 711 Kaskaskia Street, P.O. Box 711, Menard, IL 62259

PLEASE TAKE NOTICE that on August 6, 2010, I filed in the Office of the Clerk of the Appellate Court of Illinois, First District, the attached motion and affidavit.

ABISHI C. CUNNINGHAM, JR.
Public Defender of Cook County

By:

Lester Finkle
Lester Finkle
Assistant Public Defender

PROOF OF SERVICE

I, Lester Finkle, the attorney for defendant-appellant, certify that on the 6th day of August, 2010, I caused this notice to be delivered personally to the State's Attorney as indicated above, and by mailing a copy to the above-addressed parties by depositing the same in the U. S. Mail at 69 West Washington, with proper postage prepaid.

Lester Finkle

Lester Finkle

ATTACHMENT
43

No. 10-0343

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

-) Appeal from the
-) Circuit Court of Cook
-) County, Criminal Division.
-)
-) Circuit No. 95C66000001
-)
-) Honorable
-) Luciano Panici,
-) Judge presiding.

v.

BEN WHITFIELD,

Defendant-Appellant.

**BRIEF IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL
ON APPEAL PURSUANT TO PENNSYLVANIA v. FINLEY**

NATURE OF THE CASE

After a jury trial, Mr. Whitfield was convicted of home invasion, residential burglary, and possession of a stolen motor vehicle. He was sentenced to a total of 40 years in prison. On appeal, this Court reversed and remanded for a new trial. *People v. Whitfield*, 1-96-3537 (Rule 23 Order June 19, 1998). After remand, on July 28, 1999, Mr. Whitfield pled guilty to home invasion and was sentenced to 25 years in prison. (CLR 3, 28) In the instant matter, Mr. Whitfield filed a *habeas* petition (CLR 39-45), which was denied on September 25, 2009 (CLR 52). A motion to reconsider (CLR 54-57) was denied on December 30, 2009 (CLR 3). Although the notice of appeal was stamped as being filed February 1, 2010 (CLR 59), the Clerk of the Circuit Court of Cook County issued a formal document that the notice of appeal was received on January 20, 2010, rendering the appeal timely. (CLR 64).

STATEMENT OF FACTS

The underlying facts of the original prosecution were delineated by this Court in the initial direct appeal. *People v. Whitfield*, 1-96-3537 (Rule 23 Order June 19, 1998).

Pertinent to the current appeal, Mr. Whitfield alleged in his habeas petition that he was sentenced to 25 years in prison for home invasion (as well as an additional 3 years in prison for an unrelated aggravated battery). (CLR 40) He alleged that his due process rights were violated because he would have to serve an additional sentence of mandatory supervised release (MSR) after the conclusion of his prison term. (CLR 41-42) In light of *People v. Whitfield*, 217 Ill.2d 177, 840 N.E.2d 658 (2005), he did not receive the benefit of the bargain, and his continued imprisonment is unconstitutional. (CLR 42-44)

In a written order, the trial court ruled that the petition was denied, that the plea admonishments were proper, and that the mittimus was corrected to reflect a sentence of 25 years in prison, plus 3 years MSR, with credit for 1,695 days in custody. (CLR 52) A later motion to reconsider was denied. (See CLR 3) This appeal followed.

DENIAL OF HABEAS PETITION TO STRIKE MSR

The Habeas Corpus Act outlines specific circumstances in which a petition for *habeas corpus* should be granted. See 735 ILCS 5/10-124. The purpose of the writ of *habeas corpus* is to obtain the release of persons illegally restrained of their liberty. *People ex rel. McGee v. Hill*, 350 Ill. 129, 183 N.E. 17 (1932). A writ of *habeas corpus* is available only to obtain the release of a person who has been imprisoned by a court that lacked subject matter or personal jurisdiction, or where some occurrence after the prisoner's conviction entitles him to release. *Schlemm v. Cowen*, 323 Ill. App. 3d 318, 752 N.E.2d 647 (4th Dist. 2001). The remedy of *habeas corpus* is not available to review errors of a non-jurisdictional nature, though they involve

claims of denial of constitutional rights. *People v. Cobb*, 8 Ill. App. 3d 1081, 290 N.E.2d 610 (2d Dist. 1972).

The underlying argument to Mr. Whitfield's petition is that MSR is unconstitutional. Assuming he is entitled to immediate release, a valid *habeas* petition was filed. In addition, as was alleged, *People v. Whitfield*, 217 Ill.2d 177, 840 N.E.2d 658 (2005), relied on contract principles to hold that if a defendant pleads guilty but was misinformed about the imposition of MSR, then the plea itself was not knowing and voluntary. The proper remedy crafted by the Supreme Court was to give a defendant the benefit of the bargain and reduce the prison term to incorporate the MSR term.

Unfortunately for Mr. Whitfield, the Illinois Supreme Court recently examined whether the *Whitfield* decision should be applied retroactively, and determined that it should not. In *People v. Morris*, 236 Ill. 2d 345, 925 N.E.2d 1069 (2010), the Court ruled that *Whitfield* created a new rule of law (236 Ill. 2d at 360), that this rule did not "represent a watershed rule of criminal procedure that requires retroactive application to cases on collateral review" (236 Ill. 2d at 363-364), and that, "Accordingly, we hold that the new rule announced in *Whitfield* should only be applied prospectively to cases where the conviction was not finalized prior to December 20, 2005, the date *Whitfield* was announced." 236 Ill. 2d at 366.

Since Mr. Whitfield's conviction was final 30 days after he pled guilty on July 28, 1999, it was also final prior to December 20, 2005, when the *Whitfield* decision was issued. Illinois has ruled that the decision does not have retroactive application. Thus, there is no meritorious argument to be made on appeal.

CONCLUSION

For all the reasons stated above, the Office of the Public Defender of Cook County respectfully requests that it be allowed to withdraw from representing the defendant in this appeal.

Respectfully submitted,

ABISHI C. CUNNINGHAM, JR.
Public Defender of Cook County
69 West Washington Street
15th Floor
Chicago, IL 60602
312.603.0600

Counsel for appellant.

Lester Finkle,
Assistant Public Defender

Of Counsel.

No. 10-0343

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

BEN WHITFIELD,

Defendant-Appellant.

-) Appeal from the
-) Circuit Court of Cook
-) County, Criminal Division.
-)
-) Circuit No. 95C66000001
-)
-) Honorable
-) Luciano Panici,
-) Judge presiding.

ORDER

Upon motion of the Cook County Public Defender, counsel for Defendant-Appellant, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the motion to withdraw, based on *Pennsylvania v. Finley*, is taken under advisement.

LESTER FINKLE
Assistant Public Defender

ABISHI C. CUNNINGHAM, JR.
Public Defender of Cook County

Attorney for: Defendant-Appellant

Justice

Address: 69 West Washington Street

Justice

City: Chicago, Illinois 60602

Justice

Telephone: 312.603.0600

STEVEN M. RAVID, CLERK OF THE APPELLATE COURT
FIRST DISTRICT

ATTACHMENT
48

FINLEY

NOTICE

The text of this order may
be changed or corrected
prior to the time for filing of
a Petition for Rehearing or
the disposition of the same.

THIRD DIVISION
December 8, 2010

10 DEC 10 PM:10

APPEAL

No. 1-10-0343

P.D.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BEN (a/k/a BENYEHUDAH) WHITFIELD,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Cook County.
MICHAEL P. RANDLE (Director of Illinois))	No. 95 C6 60000
Department of Corrections); and DONALD))	
D. GAETZ (Chief Executive Officer of))	
Menard Correctional Center,)	Honorable
Defendant-Appellees.)	Paul J. Nealis, Judge Presiding.

O R D E R

Pursuant to his guilty plea, defendant Ben (or BenYeHudah) Whitfield was convicted of home invasion and sentenced to 25 years' imprisonment.¹ Defendant now appeals from the denial of his *pro se* *habeas corpus* petition.

The public defender of Cook County, who represents defendant on appeal, has filed a motion for leave to withdraw as appellate counsel. A brief in support of the motion has been submitted pursuant to Pennsylvania v. Finley, 481 U.S. 551, 95 L. Ed. 2d

¹Defendant was initially convicted in a jury trial of two counts of home invasion and one count each of residential burglary and possession of a stolen motor vehicle, with concurrent 40 and 6 year prison sentences. However, we reversed the convictions and remanded for a new trial. People v. Whitfield, No. 1-96-3537 (1998) (unpublished order under Supreme Court Rule 23). Upon remand, defendant pled guilty as stated.

THE ATTORNEY

ATTACHMENT

1-10-0343

539, 107 S. Ct. 1990 (1987), in which counsel states that he has reviewed the record and concluded that no meritorious issues are present in this case. Copies of the brief and motion were sent to defendant, who was advised that he might submit any points in support of his appeal. Defendant has responded.

We have carefully reviewed the record in this case, defendant's responses, and the aforementioned brief, and we agree with counsel's conclusion. Therefore, the motion of the public defender of Cook County for leave to withdraw as counsel is allowed and the judgment of the circuit court is affirmed.

Affirmed.

MURPHY, J., with NEVILLE and STEELE, JJ., concurring.